

AMENDED IN ASSEMBLY APRIL 7, 2014

AMENDED IN ASSEMBLY MARCH 25, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1442

Introduced by Assembly Member Gatto

January 6, 2014

An act to amend Sections 1798.3, 1798.14, and 1798.19 of the Civil Code, relating to the Information Practices Act of 1977; add Section 49073.6 to the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1442, as amended, Gatto. ~~The Information Practices Act of 1977: local government. Pupil records: social media.~~

Existing law requires school districts to establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education.

This bill would, notwithstanding that provision, require a school district, county office of education, or charter school that considers a program to gather or maintain in its records any personal information obtained from social media, as defined, of any pupil enrolled in the school district, county office of education, or charter school to first notify pupils and their parents or guardians about the proposed program, and to provide an opportunity for public comment before the adoption of the program. The bill would require a school district, county office of education, or charter school that adopts a program pursuant to this provision to, among other things, gather and maintain only information that was made publicly accessible, as defined, provide a pupil with access to any personal information about the pupil obtained

from social media, and to destroy the personal information gathered from social media and maintained in its records, as provided. If a school district, county office of education, or charter school contracts with a 3rd party to gather personal information from social media on an enrolled pupil, the bill would prohibit the use, sale, or sharing of the information by the 3rd party, and would provide additional restrictions on the destruction of the information by the 3rd party, as specified.

~~The Information Practices Act of 1977 requires each state agency to maintain in its records only personal information that is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government.~~

~~This bill would expand that restriction on the maintenance of personal information to apply to a local agency, and would require a state or local agency to destroy personal information when the state or local agency determines it is no longer relevant and necessary to accomplish its purpose. The bill would establish special provisions for a Kindergarten and grades 1 to 12, inclusive, school district regarding the notification of students, parents, and guardians if it considers a program to gather or maintain student personal information in its records, restrictions on the gathering and maintenance of information gathered from social media, as defined, and the destruction of personal information gathered from social media on students maintained by the district.~~

~~By expanding the duties of local officials, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no.
State-mandated local program: yes-no.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 49073.6 is added to the Education Code,
2 to read:

1 49073.6. (a) For purposes of this section, the following terms
2 have the following meanings:

3 (1) “Social media” means an electronic service or account, or
4 electronic content, including, but not limited to, videos, still
5 photographs, blogs, video blogs, podcasts, instant and text
6 messages, e-mail, online services or accounts, or Internet Web
7 site profiles or locations.

8 (2) (A) “Publicly accessible” means anything posted on social
9 media or any other Internet Web site that is accessible to the
10 general public.

11 (B) “Publicly accessible” does not include anything posted on
12 social media or any other Internet Web site that is only accessible
13 to a restricted group of persons.

14 (b) Notwithstanding any other law or regulation, a school
15 district, county office of education, or charter school that considers
16 a program to gather or maintain in its records any personal
17 information obtained from social media of any enrolled pupil shall
18 notify pupils and their parents or guardians about the proposed
19 program and provide an opportunity for public comment before
20 the adoption of the program.

21 (c) Notwithstanding any other law or regulation, a school
22 district, county office of education, or charter school that adopts
23 a program pursuant to subdivision (b) shall do all of the following:

24 (1) Gather or maintain only information that was made publicly
25 accessible, which shall not include either of the following:

26 (A) Information that the school district, county office of
27 education, or charter school knows or has reason to believe was
28 reposted or otherwise made publicly accessible by another party
29 without the express consent of the original author.

30 (B) Any secondary information, including, but not limited to,
31 geolocation information, derived from content posted to social
32 media, unless that secondary information was intentionally made
33 publicly accessible.

34 (2) Provide a pupil with access to any personal information
35 about the pupil gathered or maintained by the school district,
36 county office of education, or charter school that was obtained
37 from social media, and an opportunity to correct or delete
38 information that was gathered or maintained in violation of
39 paragraph (1).

(3) (A) *Destroy personal information gathered from social media and maintained in its records within one year after a pupil turns 18 years of age or within one year after the pupil is no longer enrolled in the school district, county office of education, or charter school, whichever occurs first.*

(B) *Notify each parent or guardian of a pupil subject to the program that the pupil's personal information is being gathered from social media and that any information subject to this section maintained in the school district's, county of education's, or charter school's records with regard to the pupil shall be destroyed in accordance with subparagraph (A).*

(C) *If the school district, county office of education, or charter school contracts with a third party to gather personal information from social media on an enrolled pupil, the contract shall do all of following:*

(i) *Prohibit the third party from using the information for its own purposes.*

(ii) *Prohibit the third party from selling or sharing the information with any person or entity other than the school district, county office of education, or charter school.*

(iii) *Require the third party to destroy the information immediately upon satisfying the terms of the contract, within one year after a pupil turns 18 years of age, or within one year after the pupil is no longer enrolled in the school district, county office of education, or charter school, whichever occurs first.*

~~SECTION 1. Section 1798.3 of the Civil Code is amended to read:~~

~~1798.3. As used in this chapter:~~

~~(a) "Personal information" means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.~~

~~(b) "Agency" means every state office, officer, department, division, bureau, board, commission, or other state agency, except that "agency" shall not include:~~

~~(1) The California Legislature.~~

1 ~~(2) Any agency established under Article VI of the California~~
2 ~~Constitution.~~

3 ~~(3) The State Compensation Insurance Fund, except as to any~~
4 ~~records that contain personal information about the employees of~~
5 ~~the State Compensation Insurance Fund.~~

6 ~~(4) A local agency, as defined in subdivision (a) of Section 6252~~
7 ~~of the Government Code.~~

8 ~~(e) “Disclose” means to disclose, release, transfer, disseminate,~~
9 ~~or otherwise communicate all or any part of any record orally, in~~
10 ~~writing, or by electronic or any other means to any person or entity.~~

11 ~~(d) “Individual” means a natural person.~~

12 ~~(e) “Maintain” includes maintain, acquire, use, or disclose.~~

13 ~~(f) “Person” means any natural person, corporation, partnership,~~
14 ~~limited liability company, firm, or association.~~

15 ~~(g) “Record” means any file or grouping of information about~~
16 ~~an individual that is maintained by an agency by reference to an~~
17 ~~identifying particular such as the individual’s name, photograph,~~
18 ~~finger or voiceprint, or a number or symbol assigned to the~~
19 ~~individual.~~

20 ~~(h) “System of records” means one or more records, which~~
21 ~~pertain to one or more individuals, which is maintained by any~~
22 ~~agency, from which information is retrieved by the name of an~~
23 ~~individual or by some identifying number, symbol, or other~~
24 ~~identifying particular assigned to the individual.~~

25 ~~(i) “Governmental entity,” except as used in Section 1798.26,~~
26 ~~means any branch of the federal government or of the local~~
27 ~~government.~~

28 ~~(j) “Commercial purpose” means any purpose which has~~
29 ~~financial gain as a major objective. It does not include the gathering~~
30 ~~or dissemination of newsworthy facts by a publisher or broadcaster.~~

31 ~~(k) “Regulatory agency” means the Department of Business~~
32 ~~Oversight, the Department of Insurance, the Bureau of Real Estate,~~
33 ~~and agencies of the United States or of any other state responsible~~
34 ~~for regulating financial institutions.~~

35 ~~(l) “Social media” means an electronic service or account, or~~
36 ~~electronic content, including, but not limited to, videos, still~~
37 ~~photographs, blogs, video blogs, podcasts, instant and text~~
38 ~~messages, email, online services or accounts, or Internet Web site~~
39 ~~profiles or locations.~~

40 SEC. 2. Section 1798.14 of the Civil Code is amended to read:

1 ~~1798.14.— (a) Notwithstanding the exception established in~~
2 ~~paragraph (4) of subdivision (b) of Section 1798.3, as used in this~~
3 ~~section, “agency” includes a local agency, as defined in subdivision~~
4 ~~(a) of Section 6252 of the Government Code.~~

5 ~~(b) (1) Each agency shall maintain in its records only personal~~
6 ~~information that is relevant and necessary to accomplish a purpose~~
7 ~~of the agency required or authorized by the California Constitution,~~
8 ~~statute, ordinance, or mandated by the federal government, and,~~
9 ~~except as provided in subdivisions (c) and (d), shall destroy the~~
10 ~~personal information when the agency determines the personal~~
11 ~~information is no longer relevant and necessary to accomplish that~~
12 ~~purpose.~~

13 ~~(2) This subdivision does not apply to official records recorded~~
14 ~~in the office of a county recorder.~~

15 ~~(c) A school district for kindergarten or grades 1 to 12, inclusive,~~
16 ~~that considers a program to gather or maintain in its records~~
17 ~~personal information on any student enrolled in the school district~~
18 ~~shall notify students, parents, and guardians and provide an~~
19 ~~opportunity for public comment prior to the adoption of such a~~
20 ~~program.~~

21 ~~(d) A school district for kindergarten or grades 1 to 12, inclusive,~~
22 ~~that gathers or maintains, or that contracts to gather or maintain~~
23 ~~in its records personal information gathered from social media on~~
24 ~~a student enrolled in the school district shall do the following:~~

25 ~~(1) Gather or maintain only information that was made publicly~~
26 ~~accessible, not to include either:~~

27 ~~(A) Information that was reposted or otherwise made available~~
28 ~~by another party without the express consent of the original author.~~

29 ~~(B) Any secondary information, including, but not limited to,~~
30 ~~geolocation information, derived from content posted to social~~
31 ~~media, unless that secondary information itself intentionally was~~
32 ~~made publicly accessible.~~

33 ~~(2) Provide students with access to any personal information~~
34 ~~about the student gathered or maintained by the district and~~
35 ~~obtained through social media, and the opportunity to correct or~~
36 ~~delete erroneous information or information gathered or maintained~~
37 ~~in violation of paragraph (1).~~

38 ~~(3) Destroy personal information gathered from social media~~
39 ~~maintained in its records within one year of a student turning 18~~

1 years of age, or within one year after the student is no longer
2 enrolled in the school district, whichever is first.

3 (4) Notify each parent or guardian of the student that personal
4 information is being gathered from social media and that any
5 information maintained in its records with regard to the student
6 shall be destroyed in accordance with paragraph (3).

7 (5) If the school district contracts with a third party to gather or
8 maintain in the records of the third party personal information on
9 a student enrolled in the school district, require the third party to
10 hold all student personal information strictly confidential and
11 prohibit it from using that information for its own purposes, selling
12 the information, or sharing the information with any other entity
13 unless required to do so by law.

14 SEC. 3. Section 1798.19 of the Civil Code is amended to read:

15 1798.19. Each agency, when it provides by contract for the
16 operation or maintenance of records containing personal
17 information to accomplish an agency function, shall cause,
18 consistent with its authority, this chapter to be applied to those
19 records. For purposes of Article 10 (commencing with Section
20 1798.55), any contractor and any employee of the contractor, if
21 the contract is agreed to on or after July 1, 1978, shall be
22 considered to be an employee of an agency. Except as provided
23 in Section 1798.14, local government functions mandated by the
24 state are not deemed agency functions within the meaning of this
25 section.

26 SEC. 4. If the Commission on State Mandates determines that
27 this act contains costs mandated by the state, reimbursement to
28 local agencies and school districts for those costs shall be made
29 pursuant to Part 7 (commencing with Section 17500) of Division
30 4 of Title 2 of the Government Code.